

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

COREY E. JOHNSON,

Plaintiff,

v.

Case No. 7:20cv582

(K-9) OFFICER MCCOWAN, *et al.*,

Defendants.

**RESPONSE TO PLAINTIFF’S MOTION *IN LIMINE*
TO BAR DEFENDANTS’ “GOOD CHARACTER” EVIDENCE**

Defendants, by counsel, submit the following in response to Plaintiff’s Motion *In Limine* to Bar Defendants’ “Good Character” Evidence, ECF No. 142.

Defendants agree with Plaintiff that evidence of “prior work-related commendations, awards, complimentary history, promotions, or performance reviews” would constitute improper character evidence if introduced for the purpose of showing an individual defendant’s propensity to act in accordance with that good character. However, Defendants object to the categorical exclusion of any such evidence, as this evidence may be admitted for a proper purpose.

First, such evidence may be relevant to Plaintiff’s claims for supervisory liability should those claims proceed to trial. Evidence of supervisors’ assessments of their subordinates’ job performance would be probative of whether those supervisors were aware that their subordinates acted in a way that posed a risk of constitutional injury to the Plaintiff. In addition, other evidence cited in Plaintiff’s motion—specifically, the statement by the Defendants’ expert that the Virginia Department of Corrections had received awards from the American Correctional Association—is not character evidence as contemplated by Rule 404. Rather, this evidence of an

accrediting entity's approval of VDOC's operations is relevant to whether the agency was compliant with industry standards, and as such should be admissible if Plaintiff's supervisory liability claims move forward.

With respect to the claims against individual officers, Defendants do not intend to introduce evidence of performance assessments or other commendations for the purpose of demonstrating those Defendants' good character. However, they do seek to be permitted to offer general background testimony as to their personal and employment history. *See United States v. Deel*, No. 1:09cr22, 2010 U.S. Dist. LEXIS 12074, at *3 (W.D. Va. Feb. 11, 2010) (allowing the defendant "to give a brief and straight-forward recitation of his life history, including employment and family details, simply as background evidence for the jury's benefit to judge his credibility"). Further, Defendants should not be precluded from testifying as to how their training and experience informed their understanding of and reactions to the events at issue in this action, nor from testifying that they acted in good faith during the incident in question.

Respectfully submitted,

K-9 OFFICER MCCOWAN, K-9 OFFICER E. BAKER, C/O S. DEAN, C/O P. CARROLL, JEFFREY KISER, K-9 SERGEANT J. STANLEY, HAROLD W. CLARKE, MAJOR WILLIAM J. BARBETTO, and A. DAVID ROBINSON

By: /s/ Timothy E. Davis
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record for the Plaintiff.

/s/ Timothy E. Davis

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